Resolutions on Matters of General Public Interest.

4. Abolition of capital punishment.

Deputy President.—There are 20 minutes for resolutions. We shall begin the resolutions.

Mr. P. Krishna Menon.—Yes, Sir.

Deputy President.—20 minutes we have. The other we shall take up only at 3-30.

Mr. T. A. Ramachandra Ayyar.—I move that

"This Council recommends that capital punishment be abolished in the State"

Sir, the '*Hindu*' has written a sub-leader in its issue of 12th September 1929 regarding capital punishment. It was this that induced me to table this resolution. The reasons against capital punishment have been so ably stated and well argued that I am tempted to quote copiously from the article.

The Hon'ble Mr. Justice J. E. Marshall has expressed his opinion, based on several years of experience as a judge in Egypt, that at the present day the death penalty is an anachronism and a reproach to a civilization founded on the teachings of Christ and the New Testament. He has also pointed out, with reference to the results obtained in several countries where the death penalty has been repealed, that crimes punishable with death have not only not increased but show considerable decrease. With regard to capital punishment for murders it is stated that it is not a complete deterrent, for still they have murders. In Denmark, Norway, Sweden and Holland, it is said to have been found by actual experience that the abrogation of capital punishment has not, in any way, contributed to an increase in murders. In Switzerland, the Federal Constitution abolished capital punishment in 1874. The other countries of Europe where death punishment is said to have been dispensed with are Austria, Belgium, Italy, Finland, Lithunia, Portugal and Roumania. In several of the states of Germany the death penalty has been abrogated. In America several striking examples are mentioned such as the Argentines, Brazils, Columbia, Equador and Peru where the extreme penalty has been discontinued. In the United States several provinces have abolished the system and in about thirty-three states power is said to have been vested in the courts to pronounce an alternate punishment of imprisonment for life. It is a notable fact, says Justice Marshall, that the states with fewer murders are those where capital punishment has been given up. This clearly does not support the theory that the death penalty acts as a deterrent. Justice Marshall points to the fact that the principle under-lying prison administration in enlightened countries to-day is reform

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and not retribution and shows how justice tempered by mercy is the surest deterrent and that laws that err on the side of too great severity defeat this object. Capital punishment is a punishment more to the relations and friends of the person punished than to the person himself. This should not be. With death his enduring ceases and his dependants and relations, every one of whom perhaps is innocent, suffer for a long time. The person who is punished, *i. e.*, killed, is not given an opportunity to reform. In many cases, murders, for which capital punishment is awarded, are perpetrated in a fit of anger or insanity, though to prove it may not be possible. Life-long imprisonment must certainly be regarded as a severer punishment to the murderer as a very long period is given to him to repent his crime and he gets an opportunity to improve. The relations and dependants will certainly not feel so much in the case of life-long imprisonment as in the case of capital punishment. The ends of justice will thus be met by making life-long imprisonment as the extreme penalty of law as by that the perpetrator of the crime will get the extreme punishment whereas his relations and dependants will be less affected. Holding, as I do, the Hindu belief in transmigration, I have to advocate the making of life-long imprisonment as the extreme penalty of law, as it is only then that the perpetrator of the crime is given an opportunity to repent and reform. Agitation is going on in many of the civilized countries of the world to abolish this sort of punishment.

It is admitted that Cochin is far advanced in many respects than many of the civilized countries of the world. Such being the case, we must persist to remove this from our Statute Book.

Mr. C. A. Kunjunni Raja.—In seconding this resolution, I shall be content with reading a few extracts from the objects and reasons of a Bill which was introduced in the Legislative Assembly by Mr. Gaya Prasad Singh. This is what he says:—

"Capital punishment has been wholly or partly abolished in many of the progressive countries of the world. Australia, Belgium, Denmark, Holland, Italy, Norway, Portugal, Sweden, and a few States in America have already done away with death penalty. Public opinion in England, and in many other countries, is coming round to the view that capital punishment is a relic of barbarism, and is not suited to the social needs of the present time. The plea that capital punishment acts as a deterrent and exercises a restraining influence is not borne out by the experience of modern states.

The arguments in support of the abolition of the death penalty are shortly as follows:—It demoralises those who inflict; its harshness has the the effect of coarsening the public sentiment; to authorize killing is to tamper with the sanctity of human life; sometimes innocent persons have been sentenced to death and in such cases no reparation is possible.

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Science has now proved that the murders are often committed under the influence of a frenzy, which is of the nature of a disease, and has to be treated like many other diseases by proper therapeutic means. To end the life of such criminal may have the effect of depriving the culprit of all opportunity of improvement under proper remedial conditions. In times when the dignity of human life was not adequately realised, public conscience tolerated this drastic remedy. But with the growth of a large perception of the economy of human life and the need of making the best use of the same, it is necessary that means should be adopted to remove this method of punishment.

The principle that punishment for offences should be primarily regarded as a means of correction and reformation of criminals and criminally inclined persons as also as a means of educating the social conscience of the community against crimes of violence or cruelty makes it imperative under modern conditions that the death penalty for offences of any kind should be abolished."

There is a leading article in the '*Daily Herald*' by Doctor Griffiths of America and he has summarised the main arguments in support of the abolition of capital punishment. This is how he summarises the points in favour of this:—

1. " It ignores the social and individual causes of murder.
2. We do not destroy murder when we destroy the murderor.
3. Statistics and experience prove that it does not deter.
4. It gratifies cruel passions and brutalizes the community.
5. It imposes too ghoulish a task upon our fellowmen—the hangmen and the prison officials.
6. It tortures innocent relatives of the murderer.
7. It is by no means the only way to protect society from murder.
8. In a sense it is another murder—a judicial murder.
9. It is unworthy of the progress we have made in other realms.
10. It is an irrevocable penalty, which, in the case of error, can never be corrected or compensated."

So far as England is concerned, there is now a movement inaugurated by Lord Buckmaster to abolish capital punishment. It is now in a controversial stage there. Capital punishment was abolished in Roumania in 1864, Holland 1870, Italy 1888 and in Norway in 1905.

The sanctity of human life is so great that to take the life of a human being on any ground whatsoever is indefensible. Imprisonment for life is a more terrible sentence than death and hence the abolition of capital punishment would have no effect in increasing the crime of murder.

Mr. C. V. Kuriyan.—Sir, I support the resolution. In supporting this resolution, I should like to draw the attention of the House to a leading article in the '*Illustrated Weekly, Hindu*'. In that article Warden Lawes explodes almost every popular notion about crime and criminals. He shows that criminals are average human beings and do not belong to a special class with peculiar physical and mental characteristics. He points out that harsh laws ruthlessly enforced instead of preventing crime actually increase it. He demonstrates that

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murderers, instead of being the most intractable of prisoners, are the most amenable, and that, if they do regain their liberty, they are least likely to abuse it. He points out that the death penalty, in which he firmly believed when he became Warden of Sing Sing in 1920, not only has no deterrent effect but appears to have exactly the opposite effect.

Now the Sing Sing Prison was established in America years back where thousands of people were executed for the last 40 or 45 years. He says that American law is rigorous in enforcing capital punishment for crimes which are not even serious. For the most petty crimes sometimes some criminals are punished with death penalty. In proceeding he says that, ever since the American law enforced the said penalty so rigorously, the number of murderers has already increased and it is also in the process of increasing. He has concluded by saying that capital punishment is no real deterrent. He also says that most of these murders were generally committed in impulsive moments or in a fit of forgetfulness or provocation. He proves that, as soon as the prisoner is charged with capital punishment, he generally becomes callous and resigns himself sometimes to fatalism rather than to God. The prisoner forgets even the ultimate end of his soul. The writer, in the midst of the article, referred to so many incidents in which certain prisoners have viewed life in a callous way. I shall refer to some of the utterances made by some of these prisoners who have dared to face death with the utmost resignation that can possibly be imagined. Some of the condemned are stoical and refuse any religious consolation. A young man of good intelligence said, while he was led to the electric chair, "Life is a joke, Warden, no one gets out of it alive". Another gentleman who was an Oxford Undergraduate referred to some passages in Shakespeare while he was led to that chair. "He that cuts off twenty years of life, cuts off so many years of fearing death". In awarding death penalty, the reformative side of law fails altogether.

All these show that, generally, the prisoners do not improve their character for fear of death punishment. But somehow they grow so callous and they resign to the law without any regard for future life. If, however, some of them are let aloof and are turned to some reformatories, it is most probable that they may reform their character and sometimes may lead much better lives than ordinary human beings. Since such punishment is likely to be arbitrary and sometimes imposed on account of mistakes committed in the weighing of legal evidence, it is advisable to change the law so as to avoid such arbitrary or sometimes mistaken methods of punishment. I know certain

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cases in which Judges, before going to write the judgment restlessly walk up and down till they finally decide to award death penalty and do full justice. They will take pains and their conscience will be troubled to a very great extent to arrive at a decision. Once they settle their minds and pass capital punishment, it is likely to be reversed on account of the legal evidence in the case in the Appellate Court. Cases naturally occur everywhere that in cases where capital punishment has been accorded they have been actually reversed in the Courts of Appeal. Considering that difficulty also it is highly necessary that capital punishment should be abolished altogether.

Dr. A. G. Menon.—We have only five minutes more.

Mr. Thomas Manjuran.—I shall fill up the time. We must go through five minutes. I am sorry to find that I am not in a position to support this resolution not because I am callous of the fact that murder, that hanging, is a brutal thing, but because I am obliged to look at both sides. There are various facts to be considered when we want to interfere with a long-standing institution as death sentence or death penalty. I know that, in a few modern countries, the experiment has been tried with more or less varying success. It is not, as the mover of the resolution makes out, a case in which even those countries have complete satisfaction with the thing they have done. There are various cases where real difficulties arise, about which I shall refer. I shall, at the outset, mention one fact, that is, that the law in England and the law in India on this matter are rather different, different in very important matters. In England, where a man is found to be guilty of murder, the Judge has not the option but to sentence him to be hanged. In India, on the other hand, when a man is found guilty, the Judge here is given the option either to sentence him to be hanged or to sentence him for imprisonment for life.

Mr. T. M. Krishna Menon.—He has not that option He must give reasons.

Mr. Thomas Manjuran.—Certainly it is upon reasons. He has got that option. In England, on the other hand, even assuming that there were mitigating circumstances, the Judge has no option. All that he can do is to recommend to the mercy of the Local Government Board. These two laws are vitally different. I can easily imagine that the great majority of cases of real murder are not cases of callous pre-meditated murder. Very often it happens that a blow is struck either as a case of self-defence or in an unguarded moment on account of a sudden passion. The law says, nevertheless, that that offence will be murder unless the perpetration of the act comes within the four walls of certain specified limits. I find there are cases like

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that of notorious Smith who married seven times seven women with more or less money attached to them and buried one wife after another for the sake of that money after killing them. I would be the last man to say that such a pre-meditated mercenary like that should escape the death penalty so as to facilitate the doing of other notorious acts. It is perhaps the extreme case. That is a recorded case. The man is called Peace. That man married no less than seven women. He had a good personality. Eventually he went too far, and when he was on the scaffold, he confessed that he had murdered and buried seven wives. There are cases, on the other hand, where a man strikes a blow on the spur of the moment and the man is accidentally killed. It is very easy to prove whether one is killed by accident or not. If the Judge is a very liberal person, it may be technically a serious one, but the Judge can, under some mitigating circumstances, have the option.

Mr. T. M. Krishna Menon.—With considerable difficulty.

Mr. Thomas Manjuran.—Our learned Judges in the Chief Court have been doing that for a long time. It may be for want of nerve or for want of anything else. It may be due to humanitarian reasons. But, so long as there is the superstition that the ghost of the man is likely to haunt the houses of the Judges, there is no fear of the Judges carrying it too far so that that itself is a safeguard.

So that, what I say is, where there is no rigorous law enjoining the Judges to sentence a man to be hanged in cases of murder being proved, the harshness of the thing does not exist. If, as a matter of fact, as the mover said, for 20 years the result in Cochin shows only one case of hanging, whereas, I am sure, there must have been at least 75 or 100 convictions of murder, after all, very much cannot be said against the system which results in very very poor results. On the other hand, let us go and consider the state of affairs in countries where this has been abolished.

Mr. T. K. Nayar.—It is 3-30, Sir.

Adjournment motion re: Management of the Leper Asylum.

Deputy President.—We shall take up the adjournment motion.

Dr. A. R. Menon.—Sir, I gave this adjournment motion to call the attention of this House and to raise a discussion on the projected or contemplated transfer of the Leper Asylum to a private body of men. I fully feel conscious that the President has given a very liberal interpretation of the rule, for, by a

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